

By: Carona

S. B. No. 846

A BILL TO BE ENTITLED

AN ACT

relating to certain fees and penalties applicable to the regulation of barbers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. ^{Subsection (b),} Section 23(b), Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The fees to be paid to the Board by an applicant for an examination to determine the applicant's [his] fitness to receive a certificate of registration to practice barbering or to practice as a barber technician shall be set by the board in an amount not to exceed \$50 [\$10].

SECTION 2. Section 24, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 24. VIOLATIONS [OFFENSES-AND-PENALTY]. Each of the following is a violation of this Act for which an administrative penalty may be imposed under Section 24A of this Act: [offenses shall--constitute--a--misdemeanor--punishable--upon--conviction--in--a--court--of--competent--jurisdiction--by--a--fine--of--not--less--than--twenty-five--dollars--(\$25.00)--nor--more--than--two-hundred-dollars (\$200.00)-]

(A) The violation of any of the provisions of Sections 1, 2, or 3 of this Act;

3-31-99
4-7-99
5-19-99
J. L. [illegible]

1 (B) Permitting any person in one's employ, 1/2
2 supervision, or control to practice as a barber or other licensee
3 unless that person has a current certificate of registration or
4 license issued by the board;

5 (C) Obtaining or attempting to obtain a certificate of
6 registration or license by fraudulent representation;

7 (C-1) For anyone who owns, operates or manages a
8 barber school or college to work a chair or to permit teachers,
9 student teachers, or anyone other than an enrolled student to
10 render barbering services to the public in their said
11 establishment; and

12 (D) The willful failure to display a certificate of
13 registration or license as required by Section 19 of this Act.

14 SECTION 3. Chapter 65, Acts of the 41st Legislature, 1st
15 Called Session, 1929 (Article 8407a, Vernon's Texas Civil
16 Statutes), is amended by adding Sections 24A^{through}24M to read as
17 follows:

18 Sec. 24A. IMPOSITION OF ADMINISTRATIVE PENALTY. The board
19 may impose an administrative penalty on a person for a violation
20 under Section 24 of this Act.

21 Sec. 24B. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount
22 of the administrative penalty may not exceed \$1,000. Each day a
23 violation continues or occurs is a separate violation for purposes
24 of imposing a penalty.

25 (b) The amount of a penalty shall be based on:

26 (1) the seriousness of the violation, including the
27 nature, circumstances, extent, and gravity of the violation;

1 (2) the economic harm to property or the public caused
2 by the violation;

3 (3) the history of previous violations;

4 (4) the amount necessary to deter a future violation;

5 (5) efforts to correct the violation; and

6 (6) any other matter that justice may require.

7 Sec. 24C. REPORT AND NOTICE OF VIOLATION AND ADMINISTRATIVE
8 PENALTY. (a) If the executive director determines that a
9 violation occurred, the executive director may issue to the board a
10 report stating:

11 (1) the facts on which the determination is based; and

12 (2) the executive director's recommendation on the
13 imposition of an administrative penalty, including a recommendation
14 on the amount of the penalty.

15 (b) Not later than the 14th day after the date the report is
16 issued, the executive director shall give written notice of the
17 report to the person.

18 (c) The notice must:

19 (1) include a brief summary of the alleged violation;

20 (2) state the amount of the recommended penalty; and

21 (3) inform the person of the person's right to a
22 hearing on the occurrence of the violation, the amount of the
23 penalty, or both.

24 Sec. 24D. ADMINISTRATIVE PENALTY TO BE PAID OR HEARING
25 REQUESTED. (a) Not later than the 20th day after the date the
26 person receives the notice, the person in writing may:

27 (1) accept the determination and recommended

1 administrative penalty of the executive director; or

2 (2) make a request for a hearing on the occurrence of
3 the violation, the amount of the penalty, or both.

4 (b) If the person accepts the determination and recommended
5 penalty of the executive director, the board by order shall approve
6 the determination and impose the recommended penalty.

7 Sec. 24E. HEARING. (a) If the person requests a hearing or
8 fails to respond in a timely manner to the notice, the executive
9 director shall set a hearing and give written notice of the hearing
10 to the person. An administrative law judge of the State Office of
11 Administrative Hearings shall hold the hearing.

12 (b) The administrative law judge shall make findings of fact
13 and conclusions of law and promptly issue to the board a proposal
14 for a decision about the occurrence of the violation and the amount
15 of any proposed administrative penalty.

16 Sec. 24F. DECISION BY BOARD. (a) Based on the findings of
17 fact, conclusions of law, and proposal for a decision, the board by
18 order may:

19 (1) find that a violation occurred and impose an
20 administrative penalty; or

21 (2) find that a violation did not occur.

22 (b) The notice of the board's order given to the person must
23 include a statement of the right of the person to judicial review
24 of the order.

25 Sec. 24G. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not
26 later than the 30th day after the date the board's order becomes
27 final, the person shall:

1 (1) pay the administrative penalty; or
2 (2) file a petition for judicial review contesting the
3 occurrence of the violation, the amount of the penalty, or both.

4 Sec. 24H. STAY OF ENFORCEMENT OF ADMINISTRATIVE PENALTY.

5 (a) Within the 30-day period prescribed by Section 24G of this
6 Act, a person who files a petition for judicial review may:

7 (1) stay enforcement of the administrative penalty by:
8 (A) paying the penalty to the court for
9 placement in an escrow account; or
10 (B) giving the court a supersedeas bond approved
11 by the court that:

12 (i) is for the amount of the penalty; and
13 (ii) is effective until all judicial
14 review of the board's order is final; or

15 (2) request the court to stay enforcement of the
16 penalty by:

17 (A) filing with the court a sworn affidavit of
18 the person stating that the person is financially unable to pay the
19 penalty and is financially unable to give the supersedeas bond; and

20 (B) giving a copy of the affidavit to the
21 executive director by certified mail.

22 (b) If the executive director receives a copy of an
23 affidavit under Subsection (a)(2) of this section, the executive
24 director may file with the court, not later than the fifth day
25 after the date the copy is received, a contest to the affidavit.
26 The court shall hold a hearing on the facts alleged in the
27 affidavit as soon as practicable and shall stay the enforcement of

1 the penalty on finding that the alleged facts are true. The person
2 who files an affidavit has the burden of proving that the person is
3 financially unable to pay the penalty and to give a supersedeas
4 bond.

5 Sec. 24I. COLLECTION OF ADMINISTRATIVE PENALTY. (a) If the
6 person does not pay the administrative penalty and the enforcement
7 of the penalty is not stayed, the penalty may be collected.

8 (b) The attorney general may sue to collect the penalty.

9 Sec. 24J. DECISION BY COURT. (a) If the court sustains the
10 finding that a violation occurred, the court may uphold or reduce
11 the amount of the administrative penalty and order the person to
12 pay the full or reduced amount of the penalty.

13 (b) If the court does not sustain the finding that a
14 violation occurred, the court shall order that a penalty is not
15 owed.

16 Sec. 24K. REMITTANCE OF ADMINISTRATIVE PENALTY AND INTEREST.
17 (a) If the person paid the administrative penalty and if the
18 amount of the penalty is reduced or the penalty is not upheld by
19 the court, the court shall order, when the court's judgment becomes
20 final, that the appropriate amount plus accrued interest be
21 remitted to the person.

22 (b) The interest accrues at the rate charged on loans to
23 depository institutions by the New York Federal Reserve Bank.

24 (c) The interest shall be paid for the period beginning on
25 the date the penalty is paid and ending on the date the penalty is
26 remitted.

27 Sec. 24L. RELEASE OF BOND. (a) If the person gave a

1 supersedeas bond and the administrative penalty is not upheld by
2 the court, the court shall order, when the court's judgment becomes
3 final, the release of the bond.

4 (b) If the person gave a supersedeas bond and the amount of
5 the penalty is reduced, the court shall order the release of the
6 bond after the person pays the reduced amount.

7 Sec. 24M. ADMINISTRATIVE PROCEDURE. A proceeding to impose
8 an administrative penalty is considered to be a contested case
9 under Chapter 2001, Government Code.

10 SECTION 4. (a) This Act takes effect September 1, 1999.

11 (b) The change in law made by this Act to ^{Subsection (b),} (Section 23(b)),
12 Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929
13 (Article 8407a, Vernon's Texas Civil Statutes), applies only to an
14 application for an examination filed on or after that date. An
15 application filed before the effective date of this Act is governed
16 by the law in effect on the date the application was filed, and the
17 former law is continued in effect for that purpose.

18 (c) The change in law made by this Act applies only to a
19 violation under Section 24, Chapter 65, Acts of the 41st
20 Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's
21 Texas Civil Statutes), as amended by this Act, that occurs on or
22 after the effective date of this Act. A violation of that section
23 that occurs before the effective date of this Act is governed by
24 the law in effect on the day the violation occurred, and the
25 former law is continued in effect for that purpose.

26 (d) For purposes of Subsection (c) of this section, a
27 violation occurs before the effective date of this Act if any

1 element of the violation occurs before that date.

2 SECTION 5. The importance of this legislation and the
3 crowded condition of the calendars in both houses create an
4 emergency and an imperative public necessity that the
5 constitutional rule requiring bills to be read on three several
6 days in each house be suspended, and this rule is hereby suspended.

BILL ANALYSIS

Senate Research Center
76R7296 GJH-D

S.B. 846
By: Carona
State Affairs
3/28/1999
As Filed

DIGEST

Currently, Texas law requires a person who is taking the barber examination to pay a \$10 fee for such an examination. It is estimated that these examinations cost the agency \$35 to administer. The Texas Barber Law also does not provide the State Board of Barber Examiners (board) the ability to assess administrative fines and civil penalties for violations of the law. S.B. 846 authorizes the board to set the examination fee that is charged to an applicant and provides that any violator of the Texas Barber law to be assessed an administrative penalty.

PURPOSE

As proposed, S.B. 846 regulates certain fees and penalties applicable to the regulation of barbers.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 23(b), Chapter 65, (Article 8407a, V.T.C.S.), to require the fees to be paid to the Board by an applicant for an examination to determine the applicant's, rather than his, fitness to receive a certificate of registration to practice barbering or to practice as a barber technician to be set by the board in an amount not to exceed \$50, rather than \$10.

SECTION 2. Amends Section 24, Chapter 65, (Article 8407a, V.T.C.S.), as follows:

Sec. 24. VIOLATIONS. Authorizes certain actions to be a violation of this Act for which an administrative penalty may be imposed under Section 24A of this Act. Deletes text regarding punishment by a fine. Makes conforming changes.

SECTION 3. Amends Chapter 65, (Article 8407a, V.T.C.S) by adding Section 24A-24M, as follows:

Sec. 24A. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the board to impose an administrative penalty on a person for a violation under Section 24 of this Act.

Sec. 24B. AMOUNTS OF ADMINISTRATION PENALTY. Prohibits the amount of the administrative penalty from exceeding \$1,000. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Requires the amount of penalty to be based on certain criteria.

Sec. 24C. REPORT AND NOTICE OF VIOLATION AND ADMINISTRATIVE PENALTY. Authorizes the executive director to issue to the board a report stating certain facts and recommendations if the executive director determines that a violation occurred. Requires the executive director to give written notice of the report to the person not later than a certain date. Requires the notice to include certain information.

Sec. 24D. ADMINISTRATIVE PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person to in writing take certain action, not later than not later than the 20th day after the date the person receives the notice. Requires the board by order to approve the determination and impose the recommended penalty, if the person accepts the determination and recommended penalty of the executive director.

Sec. 24E. HEARING. Requires the executive director to set a hearing and give written notice of the hearing to the person, if the person requests a hearing or fails to respond in a timely manner to the notice. Requires an administrative law judge of the State Office of Administrative Hearing to hold the hearing. Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 24F. DECISION BY BOARD. Authorizes the board based on the findings of fact, conclusions of law, and proposal for a decision to by order to conclude certain finds. Requires the notice of the board's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 24G. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires the person not later than a certain date to take certain action.

Sec. 24H. STAY OF ENFORCEMENT OF ADMINISTRATIVE PENALTY. Authorizes a person who files a petition for judicial review, within the 30-day period prescribed by Section 24G of this Act to take certain action. Authorizes the executive director to file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit, if the executive director receives a copy of an affidavit under Subsection (a)(2) of this section. Requires the court to hold a hearing on the fact alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 24I. COLLECTION OF ADMINISTRATIVE PENALTY. Authorizes the penalty to be collected if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

Sec. 24J. DECISION BY COURT. Authorizes to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty, if the court sustains the finding that a violation occurred. Requires the court to order that a penalty is not owed, if the court does not sustain the finding that a violation occurred.

Sec. 24K. REMITTANCE OF ADMINISTRATIVE PENALTY AND INTEREST. Requires the court to order, when the court's judgement becomes final, that the appropriate amount plus accrued interest be remitted to the person, if the person paid the administrative penalty is not upheld by the court. Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 24L. RELEASE OF BOND. Requires a court to order, when the court's judgment becomes final, the release of the bond, if the person gave a supersedeas bond and the administrative penalty is not upheld by the court. Requires the court to order the release of the bond after the person pays the reduced amount, if the person gave a supersedeas bond and the amount of the penalty is reduced.

Sec. 24M. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to impose an administrative penalty is considered to be a contested case under Chapter 2001, Government Code.

SECTION 4. Effective date: September 1, 1999.

Makes application of this Act prospective.

SECTION 5. Emergency clause.

1-1 By: Carona S.B. No. 846
1-2 (In the Senate - Filed March 3, 1999; March 4, 1999, read
1-3 first time and referred to Committee on State Affairs;
1-4 March 31, 1999, reported favorably by the following vote: Yeas 8,
1-5 Nays 0; March 31, 1999, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to certain fees and penalties applicable to the regulation
1-9 of barbers.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsection (b), Section 23, Chapter 65, Acts of
1-12 the 41st Legislature, 1st Called Session, 1929 (Article 8407a,
1-13 Vernon's Texas Civil Statutes), is amended to read as follows:

1-14 (b) The fees to be paid to the Board by an applicant for an
1-15 examination to determine the applicant's [his] fitness to receive a
1-16 certificate of registration to practice barbering or to practice as
1-17 a barber technician shall be set by the Board in an amount not to
1-18 exceed \$50 [\$10].

1-19 SECTION 2. Section 24, Chapter 65, Acts of the 41st
1-20 Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's
1-21 Texas Civil Statutes), is amended to read as follows:

1-22 Sec. 24. VIOLATIONS [OFFENSES--AND--PENALTY]. Each of the
1-23 following is a violation of this Act for which an administrative
1-24 penalty may be imposed under Section 24A of this Act: [offenses
1-25 shall constitute a misdemeanor--punishable--upon--conviction--in--a
1-26 court--of--competent--jurisdiction--by--a--fine--of--not--less--than
1-27 twenty-five-dollars-(\$25.00)-nor--more--than--two--hundred--dollars
1-28 (\$200.00)-.]

1-29 (A) The violation of any of the provisions of Sections
1-30 1, 2, or 3 of this Act;

1-31 (B) Permitting any person in one's employ,
1-32 supervision, or control to practice as a barber or other licensee
1-33 unless that person has a current certificate of registration or
1-34 license issued by the board;

1-35 (C) Obtaining or attempting to obtain a certificate of
1-36 registration or license by fraudulent representation;

1-37 (C-1) For anyone who owns, operates or manages a
1-38 barber school or college to work a chair or to permit teachers,
1-39 student teachers, or anyone other than an enrolled student to
1-40 render barbering services to the public in their said
1-41 establishment; and

1-42 (D) The willful failure to display a certificate of
1-43 registration or license as required by Section 19 of this Act.

1-44 SECTION 3. Chapter 65, Acts of the 41st Legislature, 1st
1-45 Called Session, 1929 (Article 8407a, Vernon's Texas Civil
1-46 Statutes), is amended by adding Sections 24A through 24M to read as
1-47 follows:

1-48 Sec. 24A. IMPOSITION OF ADMINISTRATIVE PENALTY. The board
1-49 may impose an administrative penalty on a person for a violation
1-50 under Section 24 of this Act.

1-51 Sec. 24B. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount
1-52 of the administrative penalty may not exceed \$1,000. Each day a
1-53 violation continues or occurs is a separate violation for purposes
1-54 of imposing a penalty.

1-55 (b) The amount of a penalty shall be based on:

1-56 (1) the seriousness of the violation, including the
1-57 nature, circumstances, extent, and gravity of the violation;

1-58 (2) the economic harm to property or the public caused
1-59 by the violation;

1-60 (3) the history of previous violations;

1-61 (4) the amount necessary to deter a future violation;

1-62 (5) efforts to correct the violation; and

1-63 (6) any other matter that justice may require.

1-64 Sec. 24C. REPORT AND NOTICE OF VIOLATION AND ADMINISTRATIVE

PENALTY. (a) If the executive director determines that a violation occurred, the executive director may issue to the board a report stating:

(1) the facts on which the determination is based; and
(2) the executive director's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person.

(c) The notice must:

(1) include a brief summary of the alleged violation;
(2) state the amount of the recommended penalty; and
(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 24D. ADMINISTRATIVE PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the executive director; or
(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the executive director, the board by order shall approve the determination and impose the recommended penalty.

Sec. 24E. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give written notice of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 24F. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may:

(1) find that a violation occurred and impose an administrative penalty; or
(2) find that a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Sec. 24G. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty; or
(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 24H. STAY OF ENFORCEMENT OF ADMINISTRATIVE PENALTY. (a) Within the 30-day period prescribed by Section 24G of this Act, a person who files a petition for judicial review may:

(1) stay enforcement of the administrative penalty by:
(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and
(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(b) If the executive director receives a copy of an

affidavit under Subsection (a)(2) of this section, the executive director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 24I. COLLECTION OF ADMINISTRATIVE PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Sec. 24J. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Sec. 24K. REMITTANCE OF ADMINISTRATIVE PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 24L. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the administrative penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Sec. 24M. ADMINISTRATIVE PROCEDURE. A proceeding to impose an administrative penalty is considered to be a contested case under Chapter 2001, Government Code.

SECTION 4. (a) This Act takes effect September 1, 1999.

(b) The change in law made by this Act to Subsection (b), Section 23, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), applies only to an application for an examination filed on or after that date. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act applies only to a violation under Section 24, Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes), as amended by this Act, that occurs on or after the effective date of this Act. A violation of that section that occurs before the effective date of this Act is governed by the law in effect on the day the violation occurred, and the former law is continued in effect for that purpose.

(d) For purposes of Subsection (c) of this section, a violation occurs before the effective date of this Act if any element of the violation occurs before that date.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

* * * * *

FAVORABLE
SENATE COMMITTEE REPORT ON

(SB) SCR SJR SR HB HCR HJR 846
By Carona
(Author/Senate Sponsor)
3/31/99
(date)

We, your Committee on STATE AFFAIRS, to which was referred the attached measure,
have on 3/30/99, had the same under consideration and I am instructed to report it
(date of hearing)
back with the recommendation (s) that it:

(x) do pass and be printed

() do pass and be ordered not printed

(x) and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. (x) yes () no

A revised fiscal note was requested. () yes () no

An actuarial analysis was requested. () yes () no

Considered by subcommittee. () yes () no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Shapiro, Chair			✓	
Senator Shapleigh, Vice-Chair	✓			
Senator Bernsen	✓			
Senator Brown	✓			
Senator Cain	✓			
Senator Haywood	✓			
Senator Lucio	✓			
Senator Nixon	✓			
Senator Wentworth	✓			
TOTAL VOTES	8	0	1	0

COMMITTEE ACTION

S260 Considered in public hearing
S270 Testimony taken

COMMITTEE CLERK

CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill
Retain one copy of this form for Committee files

WITNESS LIST

SB 846
SENATE COMMITTEE REPORT
State Affairs Committee

March 30, 1999 - 11:00A

On: Williams, Charles E. (State Board of Barber Examiners), San
Antonio

Registering, but not testifying:

On: Brown, Will K. (State Board of Barber Examiners), Austin

Lennox, Douglas (State Board of Barber Examiners), Austin

BILL ANALYSIS

Senate Research Center
76R7296 GJH-D

S.B. 846
By: Carona
State Affairs
3/28/1999
As Filed

DIGEST

Currently, Texas law requires a person who is taking the barber examination to pay a \$10 fee for such an examination. It is estimated that these examinations cost the agency \$35 to administer. The Texas Barber Law also does not provide the State Board of Barber Examiners (board) the ability to assess administrative fines and civil penalties for violations of the law. S.B. 846 authorizes the board to set the examination fee that is charged to an applicant and provides that any violator of the Texas Barber law to be assessed an administrative penalty.

PURPOSE

As proposed, S.B. 846 regulates certain fees and penalties applicable to the regulation of barbers.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 23(b), Chapter 65, (Article 8407a, V.T.C.S.), to require the fees to be paid to the Board by an applicant for an examination to determine the applicant's, rather than his, fitness to receive a certificate of registration to practice barbering or to practice as a barber technician to be set by the board in an amount not to exceed \$50, rather than \$10.

SECTION 2. Amends Section 24, Chapter 65, (Article 8407a, V.T.C.S.), as follows:

Sec. 24. VIOLATIONS. Authorizes certain actions to be a violation of this Act for which an administrative penalty may be imposed under Section 24A of this Act. Deletes text regarding punishment by a fine. Makes conforming changes.

SECTION 3. Amends Chapter 65, (Article 8407a, V.T.C.S) by adding Section 24A-24M, as follows:

Sec. 24A. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the board to impose an administrative penalty on a person for a violation under Section 24 of this Act.

Sec. 24B. AMOUNTS OF ADMINISTRATION PENALTY. Prohibits the amount of the administrative penalty from exceeding \$1,000. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Requires the amount of penalty to be based on certain criteria.

Sec. 24C. REPORT AND NOTICE OF VIOLATION AND ADMINISTRATIVE PENALTY. Authorizes the executive director to issue to the board a report stating certain facts and recommendations if the executive director determines that a violation occurred. Requires the executive director to give written notice of the report to the person not later than a certain date. Requires the notice to include certain information.

Sec. 24D. ADMINISTRATIVE PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person to in writing take certain action, not later than not later than the 20th day after the date the person receives the notice. Requires the board by order to approve the determination and impose the recommended penalty, if the person accepts the determination and recommended penalty of the executive director.

Sec. 24E. HEARING. Requires the executive director to set a hearing and give written notice of the hearing to the person, if the person requests a hearing or fails to respond in a timely manner to the notice. Requires an administrative law judge of the State Office of Administrative Hearing to hold the hearing. Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 24F. DECISION BY BOARD. Authorizes the board based on the findings of fact, conclusions of law, and proposal for a decision to by order to conclude certain finds. Requires the notice of the board's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 24G. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires the person not later than a certain date to take certain action.

Sec. 24H. STAY OF ENFORCEMENT OF ADMINISTRATIVE PENALTY. Authorizes a person who files a petition for judicial review, within the 30-day period prescribed by Section 24G of this Act to take certain action. Authorizes the executive director to file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit, if the executive director receives a copy of an affidavit under Subsection (a)(2) of this section. Requires the court to hold a hearing on the fact alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 24I. COLLECTION OF ADMINISTRATIVE PENALTY. Authorizes the penalty to be collected if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

Sec. 24J. DECISION BY COURT. Authorizes to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty, if the court sustains the finding that a violation occurred. Requires the court to order that a penalty is not owed, if the court does not sustain the finding that a violation occurred.

Sec. 24K. REMITTANCE OF ADMINISTRATIVE PENALTY AND INTEREST. Requires the court to order, when the court's judgement becomes final, that the appropriate amount plus accrued interest be remitted to the person, if the person paid the administrative penalty is not upheld by the court. Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 24L. RELEASE OF BOND. Requires a court to order, when the court's judgment becomes final, the release of the bond, if the person gave a supersedeas bond and the administrative penalty is not upheld by the court. Requires the court to order the release of the bond after the person pays the reduced amount, if the person gave a supersedeas bond and the amount of the penalty is reduced.

Sec. 24M. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to impose an administrative penalty is considered to be a contested case under Chapter 2001, Government Code.

SECTION 4. Effective date: September 1, 1999.

Makes application of this Act prospective.

SECTION 5. Emergency clause.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 29, 1999

TO: Honorable Florence Shapiro, Chair, Senate Committee on State Affairs

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB846 by Carona (Relating to certain fees and penalties applicable to the regulation of barbers.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB846, As Introduced: positive impact of \$59,673 through the biennium ending August 31, 2001.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2000	\$21,041
2001	38,632
2002	38,632
2003	38,632
2004	38,632

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 0001	Probable Savings/(Cost) from <i>General Revenue Fund</i> 0001
2000	\$ 39,041	\$ (18,000)
2001	56,632	(18,000)
2002	56,632	(18,000)
2003	56,632	(18,000)
2004	56,632	(18,000)

Fiscal Analysis

The bill would allow the Board of Barber Examiners to raise the examination fee up to \$50 and to assess administrative fines up to \$1,000 for violations effective September 1, 1999. An increase in the examination fee would generate almost \$48,000 in revenue during the biennium. The Board would also generate about \$48,000 in revenue during the biennium from administrative fines assessed, and there would be costs of \$36,000 for fine cases referred to the State Office of Administrative Hearings.

Methodology

The Board of Barber Examiners estimates that the examination fee would be raised to \$35, which is the actual cost of administering the examination, and it would administer approximately 924 examinations in 2000 and 990 in 2001. Presently, the Board charges \$10 for the examination.

For the assessment of administrative fines, the Board estimates that there will be 200

violations per year. The Board believes it would collect the fines from 100 of those violations and refer the remaining 100 violations to the State Office of Administrative Hearings (SOAH). Based upon the Cosmetology Commission's experience assessing administrative fines up to \$1,000 in 1998-99, it is assumed that the Board would have a similar experience assessing administrative fines. At the Cosmetology Commission the average amount of the fines assessed is \$159.41 for a one year period.

For the 100 cases referred to SOAH each year, the estimated cost to the Board would be \$18,000. SOAH reports that it spends an average of two hours per administrative fine case for the Cosmetology Commission, which is similar to the Board, and has costs of \$90 per hour.

Local Government Impact

No significant fiscal implication to units of local government is anticipated. However, the impact on an individual local court will depend upon the number of violations referred in its jurisdiction and the amount of fines collected.

Source Agencies: 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 502 Board of Barber Examiners, 302 Office Of The Attorney General

LBB Staff: JK, SD, RT, HL

REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that SB 876, by: Carona,
(Bill No.) (Author/Sponsor)

was heard by the State Affairs Committee on 3/30, 1999,

and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

Cindy R. Nottingham
(Clerk of the reporting committee)

IMPORTANT: THE YELLOW COPY OF THIS FORM AND (1) COPY OF YOUR BILL OR RESOLUTION
(COMMITTEE PRINTED VERSION) MUST BE DELIVERED TO THE ADMINISTRATION OFFICE,
E1.714. DEADLINES FOR SUBMITTING BILLS WILL BE ANNOUNCED ON A REGULAR BASIS.

Committee Clerks: Original to Calendar Clerk. Pink copy for committee files. Green and yellow copies to bill author/sponsor.
Author/Sponsor: Green copy for office files. Submit yellow copy to Administration with your bill.

April 8 19 99 Engrossed
Daisy Spaw
Engrossing Clerk

By: Carona
(Gutierrez)

S.B. No. 846

A BILL TO BE ENTITLED
AN ACT

1 relating to certain fees and penalties applicable to the regulation
2 of barbers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Subsection (b), Section 23, Chapter 65, Acts of
5 the 41st Legislature, 1st Called Session, 1929 (Article 8407a,
6 Vernon's Texas Civil Statutes), is amended to read as follows:

7 (b) The fees to be paid to the Board by an applicant for an
8 examination to determine the applicant's [his] fitness to receive a
9 certificate of registration to practice barbering or to practice as
10 a barber technician shall be set by the Board in an amount not to
11 exceed \$50 [\$10].

12 SECTION 2. Section 24, Chapter 65, Acts of the 41st
13 Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's
14 Texas Civil Statutes), is amended to read as follows:

15 Sec. 24. VIOLATIONS [~~OFFENSES-AND--PENALTY~~]. Each of the
16 following is a violation of this Act for which an administrative
17 penalty may be imposed under Section 24A of this Act: [~~offenses~~
18 ~~shall--constitute--a--misdemeanor--punishable--upon--conviction--in--a~~
19 ~~court--of--competent--jurisdiction--by--a--fine--of--not--less--than~~
20 ~~twenty-five--dollars--(\$25.00)--nor--more--than--two-hundred-dollars~~
21 ~~(\$200.00)-~~]

22 (A) The violation of any of the provisions of Sections
23 1, 2, or 3 of this Act;

24 (B) Permitting any person in one's employ,

1 supervision, or control to practice as a barber or other licensee
2 unless that person has a current certificate of registration or
3 license issued by the board;

4 (C) Obtaining or attempting to obtain a certificate of
5 registration or license by fraudulent representation;

6 (C-1) For anyone who owns, operates or manages a
7 barber school or college to work a chair or to permit teachers,
8 student teachers, or anyone other than an enrolled student to
9 render barbering services to the public in their said
10 establishment; and

11 (D) The willful failure to display a certificate of
12 registration or license as required by Section 19 of this Act.

13 SECTION 3. Chapter 65, Acts of the 41st Legislature, 1st
14 Called Session, 1929 (Article 8407a, Vernon's Texas Civil
15 Statutes), is amended by adding Sections 24A through 24M to read as
16 follows:

17 Sec. 24A. IMPOSITION OF ADMINISTRATIVE PENALTY. The board
18 may impose an administrative penalty on a person for a violation
19 under Section 24 of this Act.

20 Sec. 24B. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount
21 of the administrative penalty may not exceed \$1,000. Each day a
22 violation continues or occurs is a separate violation for purposes
23 of imposing a penalty.

24 (b) The amount of a penalty shall be based on:

25 (1) the seriousness of the violation, including the
26 nature, circumstances, extent, and gravity of the violation;

1 (2) the economic harm to property or the public caused
2 by the violation;

3 (3) the history of previous violations;

4 (4) the amount necessary to deter a future violation;

5 (5) efforts to correct the violation; and

6 (6) any other matter that justice may require.

7 Sec. 24C. REPORT AND NOTICE OF VIOLATION AND ADMINISTRATIVE
8 PENALTY. (a) If the executive director determines that a
9 violation occurred, the executive director may issue to the board a
10 report stating:

11 (1) the facts on which the determination is based; and

12 (2) the executive director's recommendation on the
13 imposition of an administrative penalty, including a recommendation
14 on the amount of the penalty.

15 (b) Not later than the 14th day after the date the report is
16 issued, the executive director shall give written notice of the
17 report to the person.

18 (c) The notice must:

19 (1) include a brief summary of the alleged violation;

20 (2) state the amount of the recommended penalty; and

21 (3) inform the person of the person's right to a
22 hearing on the occurrence of the violation, the amount of the
23 penalty, or both.

24 Sec. 24D. ADMINISTRATIVE PENALTY TO BE PAID OR HEARING
25 REQUESTED. (a) Not later than the 20th day after the date the
26 person receives the notice, the person in writing may:

1 (1) accept the determination and recommended
2 administrative penalty of the executive director; or

3 (2) make a request for a hearing on the occurrence of
4 the violation, the amount of the penalty, or both.

5 (b) If the person accepts the determination and recommended
6 penalty of the executive director, the board by order shall approve
7 the determination and impose the recommended penalty.

8 Sec. 24E. HEARING. (a) If the person requests a hearing or
9 fails to respond in a timely manner to the notice, the executive
10 director shall set a hearing and give written notice of the hearing
11 to the person. An administrative law judge of the State Office of
12 Administrative Hearings shall hold the hearing.

13 (b) The administrative law judge shall make findings of fact
14 and conclusions of law and promptly issue to the board a proposal
15 for a decision about the occurrence of the violation and the amount
16 of any proposed administrative penalty.

17 Sec. 24F. DECISION BY BOARD. (a) Based on the findings of
18 fact, conclusions of law, and proposal for a decision, the board by
19 order may:

20 (1) find that a violation occurred and impose an
21 administrative penalty; or

22 (2) find that a violation did not occur.

23 (b) The notice of the board's order given to the person must
24 include a statement of the right of the person to judicial review
25 of the order.

26 Sec. 24G. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not

1 later than the 30th day after the date the board's order becomes
2 final, the person shall:

3 (1) pay the administrative penalty; or

4 (2) file a petition for judicial review contesting the
5 occurrence of the violation, the amount of the penalty, or both.

6 Sec. 24H. STAY OF ENFORCEMENT OF ADMINISTRATIVE PENALTY.

7 (a) Within the 30-day period prescribed by Section 24G of this
8 Act, a person who files a petition for judicial review may:

9 (1) stay enforcement of the administrative penalty by:

10 (A) paying the penalty to the court for
11 placement in an escrow account; or

12 (B) giving the court a supersedeas bond approved
13 by the court that:

14 (i) is for the amount of the penalty; and

15 (ii) is effective until all judicial
16 review of the board's order is final; or

17 (2) request the court to stay enforcement of the
18 penalty by:

19 (A) filing with the court a sworn affidavit of
20 the person stating that the person is financially unable to pay the
21 penalty and is financially unable to give the supersedeas bond; and

22 (B) giving a copy of the affidavit to the
23 executive director by certified mail.

24 (b) If the executive director receives a copy of an
25 affidavit under Subsection (a)(2) of this section, the executive
26 director may file with the court, not later than the fifth day

1 after the date the copy is received, a contest to the affidavit.
2 The court shall hold a hearing on the facts alleged in the
3 affidavit as soon as practicable and shall stay the enforcement of
4 the penalty on finding that the alleged facts are true. The person
5 who files an affidavit has the burden of proving that the person is
6 financially unable to pay the penalty and to give a supersedeas
7 bond.

8 Sec. 24I. COLLECTION OF ADMINISTRATIVE PENALTY. (a) If the
9 person does not pay the administrative penalty and the enforcement
10 of the penalty is not stayed, the penalty may be collected.

11 (b) The attorney general may sue to collect the penalty.

12 Sec. 24J. DECISION BY COURT. (a) If the court sustains the
13 finding that a violation occurred, the court may uphold or reduce
14 the amount of the administrative penalty and order the person to
15 pay the full or reduced amount of the penalty.

16 (b) If the court does not sustain the finding that a
17 violation occurred, the court shall order that a penalty is not
18 owed.

19 Sec. 24K. REMITTANCE OF ADMINISTRATIVE PENALTY AND INTEREST.
20 (a) If the person paid the administrative penalty and if the
21 amount of the penalty is reduced or the penalty is not upheld by
22 the court, the court shall order, when the court's judgment becomes
23 final, that the appropriate amount plus accrued interest be
24 remitted to the person.

25 (b) The interest accrues at the rate charged on loans to
26 depository institutions by the New York Federal Reserve Bank.

1 (c) The interest shall be paid for the period beginning on
2 the date the penalty is paid and ending on the date the penalty is
3 remitted.

4 Sec. 24L. RELEASE OF BOND. (a) If the person gave a
5 supersedeas bond and the administrative penalty is not upheld by
6 the court, the court shall order, when the court's judgment becomes
7 final, the release of the bond.

8 (b) If the person gave a supersedeas bond and the amount of
9 the penalty is reduced, the court shall order the release of the
10 bond after the person pays the reduced amount.

11 Sec. 24M. ADMINISTRATIVE PROCEDURE. A proceeding to impose
12 an administrative penalty is considered to be a contested case
13 under Chapter 2001, Government Code.

14 SECTION 4. (a) This Act takes effect September 1, 1999.

15 (b) The change in law made by this Act to Subsection (b),
16 Section 23, Chapter 65, Acts of the 41st Legislature, 1st Called
17 Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes),
18 applies only to an application for an examination filed on or after
19 that date. An application filed before the effective date of this
20 Act is governed by the law in effect on the date the application
21 was filed, and the former law is continued in effect for that
22 purpose.

23 (c) The change in law made by this Act applies only to a
24 violation under Section 24, Chapter 65, Acts of the 41st
25 Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's
26 Texas Civil Statutes), as amended by this Act, that occurs on or

1 after the effective date of this Act. A violation of that section
2 that occurs before the effective date of this Act is governed by
3 the law in effect on the day the violation occurred, and the
4 former law is continued in effect for that purpose.

5 (d) For purposes of Subsection (c) of this section, a
6 violation occurs before the effective date of this Act if any
7 element of the violation occurs before that date.

8 SECTION 5. The importance of this legislation and the
9 crowded condition of the calendars in both houses create an
10 emergency and an imperative public necessity that the
11 constitutional rule requiring bills to be read on three several
12 days in each house be suspended, and this rule is hereby suspended.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 29, 1999

TO: Honorable Florence Shapiro, Chair, Senate Committee on State Affairs

FROM: John Keel, Director, Legislative Budget Board

IN RE: **SB846** by Carona (Relating to certain fees and penalties applicable to the regulation of barbers.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB846, As Introduced: positive impact of \$59,673 through the biennium ending August 31, 2001.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

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The bill would allow the Board of Barber Examiners to raise the examination fee up to \$50 and to assess administrative fines up to \$1,000 for violations effective September 1, 1999. An increase in the examination fee would generate almost \$48,000 in revenue during the biennium. The Board would also generate about \$48,000 in revenue during the biennium from administrative fines assessed, and there would be costs of \$36,000 for fine cases referred to the State Office of Administrative Hearings.

Methodology

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For the assessment of administrative fines, the Board estimates that there will be 200

violations per year. The Board believes it would collect the fines from 100 of those violations and refer the remaining 100 violations to the State Office of Administrative Hearings (SOAH). Based upon the Cosmetology Commission's experience assessing administrative fines up to \$1,000 in 1998-99, it is assumed that the Board would have a similar experience assessing administrative fines. At the Cosmetology Commission the average amount of the fines assessed is \$159.41 for a one year period.

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Source Agencies: 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 502 Board of Barber Examiners, 302 Office Of The Attorney General

LBB Staff: JK, SD, RT, HL

HOUSE COMMITTEE REPORT

1st Printing

99 MAY -4 AM 8:40
HOUSE OF REPRESENTATIVES

By: Carona
(Gutierrez)

S.B. No. 846

A BILL TO BE ENTITLED

AN ACT

1 relating to certain fees and penalties applicable to the regulation
2 of barbers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Subsection (b), Section 23, Chapter 65, Acts of
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7 (b) The fees to be paid to the Board by an applicant for an
8 examination to determine the applicant's [his] fitness to receive a
9 certificate of registration to practice barbering or to practice as
10 a barber technician shall be set by the Board in an amount not to
11 exceed \$50 [\$+0].

12 SECTION 2. Section 24, Chapter 65, Acts of the 41st
13 Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's
14 Texas Civil Statutes), is amended to read as follows:

15 Sec. 24. VIOLATIONS [~~OFFENSES-AND--PENALTY~~]. Each of the
16 following is a violation of this Act for which an administrative
17 penalty may be imposed under Section 24A of this Act: [~~offenses~~
18 ~~shall--constitute--a--misdemeanor--punishable--upon--conviction--in--a~~
19 ~~court--of--competent--jurisdiction--by--a--fine--of--not--less--than~~
20 ~~twenty-five--dollars--(\$25.00)--nor--more--than--two-hundred-dollars~~
21 ~~(\$200.00)-~~]

22 (A) The violation of any of the provisions of Sections
23 1, 2, or 3 of this Act;

24 (B) Permitting any person in one's employ,

1 supervision, or control to practice as a barber or other licensee
2 unless that person has a current certificate of registration or
3 license issued by the board;

4 (C) Obtaining or attempting to obtain a certificate of
5 registration or license by fraudulent representation;

6 (C-1) For anyone who owns, operates or manages a
7 barber school or college to work a chair or to permit teachers,
8 student teachers, or anyone other than an enrolled student to
9 render barbering services to the public in their said
10 establishment; and

11 (D) The willful failure to display a certificate of
12 registration or license as required by Section 19 of this Act.

13 SECTION 3. Chapter 65, Acts of the 41st Legislature, 1st
14 Called Session, 1929 (Article 8407a, Vernon's Texas Civil
15 Statutes), is amended by adding Sections 24A through 24M to read as
16 follows:

17 Sec. 24A. IMPOSITION OF ADMINISTRATIVE PENALTY. The board
18 may impose an administrative penalty on a person for a violation
19 under Section 24 of this Act.

20 Sec. 24B. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount
21 of the administrative penalty may not exceed \$1,000. Each day a
22 violation continues or occurs is a separate violation for purposes
23 of imposing a penalty.

24 (b) The amount of a penalty shall be based on:

25 (1) the seriousness of the violation, including the
26 nature, circumstances, extent, and gravity of the violation;

1 (2) the economic harm to property or the public caused
2 by the violation;

3 (3) the history of previous violations;

4 (4) the amount necessary to deter a future violation;

5 (5) efforts to correct the violation; and

6 (6) any other matter that justice may require.

7 Sec. 24C. REPORT AND NOTICE OF VIOLATION AND ADMINISTRATIVE
8 PENALTY. (a) If the executive director determines that a
9 violation occurred, the executive director may issue to the board a
10 report stating:

11 (1) the facts on which the determination is based; and

12 (2) the executive director's recommendation on the
13 imposition of an administrative penalty, including a recommendation
14 on the amount of the penalty.

15 (b) Not later than the 14th day after the date the report is
16 issued, the executive director shall give written notice of the
17 report to the person.

18 (c) The notice must:

19 (1) include a brief summary of the alleged violation;

20 (2) state the amount of the recommended penalty; and

21 (3) inform the person of the person's right to a
22 hearing on the occurrence of the violation, the amount of the
23 penalty, or both.

24 Sec. 24D. ADMINISTRATIVE PENALTY TO BE PAID OR HEARING
25 REQUESTED. (a) Not later than the 20th day after the date the
26 person receives the notice, the person in writing may:

1 (1) accept the determination and recommended
2 administrative penalty of the executive director; or

3 (2) make a request for a hearing on the occurrence of
4 the violation, the amount of the penalty, or both.

5 (b) If the person accepts the determination and recommended
6 penalty of the executive director, the board by order shall approve
7 the determination and impose the recommended penalty.

8 Sec. 24E. HEARING. (a) If the person requests a hearing or
9 fails to respond in a timely manner to the notice, the executive
10 director shall set a hearing and give written notice of the hearing
11 to the person. An administrative law judge of the State Office of
12 Administrative Hearings shall hold the hearing.

13 (b) The administrative law judge shall make findings of fact
14 and conclusions of law and promptly issue to the board a proposal
15 for a decision about the occurrence of the violation and the amount
16 of any proposed administrative penalty.

17 Sec. 24F. DECISION BY BOARD. (a) Based on the findings of
18 fact, conclusions of law, and proposal for a decision, the board by
19 order may:

20 (1) find that a violation occurred and impose an
21 administrative penalty; or

22 (2) find that a violation did not occur.

23 (b) The notice of the board's order given to the person must
24 include a statement of the right of the person to judicial review
25 of the order.

26 Sec. 24G. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not

1 later than the 30th day after the date the board's order becomes
2 final, the person shall:

- 3 (1) pay the administrative penalty; or
4 (2) file a petition for judicial review contesting the
5 occurrence of the violation, the amount of the penalty, or both.

6 Sec. 24H. STAY OF ENFORCEMENT OF ADMINISTRATIVE PENALTY.

7 (a) Within the 30-day period prescribed by Section 24G of this
8 Act, a person who files a petition for judicial review may:

- 9 (1) stay enforcement of the administrative penalty by:
10 (A) paying the penalty to the court for
11 placement in an escrow account; or
12 (B) giving the court a supersedeas bond approved
13 by the court that:

- 14 (i) is for the amount of the penalty; and
15 (ii) is effective until all judicial
16 review of the board's order is final; or

17 (2) request the court to stay enforcement of the
18 penalty by:

19 (A) filing with the court a sworn affidavit of
20 the person stating that the person is financially unable to pay the
21 penalty and is financially unable to give the supersedeas bond; and

22 (B) giving a copy of the affidavit to the
23 executive director by certified mail.

24 (b) If the executive director receives a copy of an
25 affidavit under Subsection (a)(2) of this section, the executive
26 director may file with the court, not later than the fifth day

1 after the date the copy is received, a contest to the affidavit.
 2 The court shall hold a hearing on the facts alleged in the
 3 affidavit as soon as practicable and shall stay the enforcement of
 4 the penalty on finding that the alleged facts are true. The person
 5 who files an affidavit has the burden of proving that the person is
 6 financially unable to pay the penalty and to give a supersedeas
 7 bond.

8 Sec. 24I. COLLECTION OF ADMINISTRATIVE PENALTY. (a) If the
 9 person does not pay the administrative penalty and the enforcement
 10 of the penalty is not stayed, the penalty may be collected.

11 (b) The attorney general may sue to collect the penalty.

12 Sec. 24J. DECISION BY COURT. (a) If the court sustains the
 13 finding that a violation occurred, the court may uphold or reduce
 14 the amount of the administrative penalty and order the person to
 15 pay the full or reduced amount of the penalty.

16 (b) If the court does not sustain the finding that a
 17 violation occurred, the court shall order that a penalty is not
 18 owed.

19 Sec. 24K. REMITTANCE OF ADMINISTRATIVE PENALTY AND INTEREST.
 20 (a) If the person paid the administrative penalty and if the
 21 amount of the penalty is reduced or the penalty is not upheld by
 22 the court, the court shall order, when the court's judgment becomes
 23 final, that the appropriate amount plus accrued interest be
 24 remitted to the person.

25 (b) The interest accrues at the rate charged on loans to
 26 depository institutions by the New York Federal Reserve Bank.

1 (c) The interest shall be paid for the period beginning on
2 the date the penalty is paid and ending on the date the penalty is
3 remitted.

4 Sec. 24L. RELEASE OF BOND. (a) If the person gave a
5 supersedeas bond and the administrative penalty is not upheld by
6 the court, the court shall order, when the court's judgment becomes
7 final, the release of the bond.

8 (b) If the person gave a supersedeas bond and the amount of
9 the penalty is reduced, the court shall order the release of the
10 bond after the person pays the reduced amount.

11 Sec. 24M. ADMINISTRATIVE PROCEDURE. A proceeding to impose
12 an administrative penalty is considered to be a contested case
13 under Chapter 2001, Government Code.

14 SECTION 4. (a) This Act takes effect September 1, 1999.

15 (b) The change in law made by this Act to Subsection (b),
16 Section 23, Chapter 65, Acts of the 41st Legislature, 1st Called
17 Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes),
18 applies only to an application for an examination filed on or after
19 that date. An application filed before the effective date of this
20 Act is governed by the law in effect on the date the application
21 was filed, and the former law is continued in effect for that
22 purpose.

23 (c) The change in law made by this Act applies only to a
24 violation under Section 24, Chapter 65, Acts of the 41st
25 Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's
26 Texas Civil Statutes), as amended by this Act, that occurs on or

1 after the effective date of this Act. A violation of that section
2 that occurs before the effective date of this Act is governed by
3 the law in effect on the day the violation occurred, and the
4 former law is continued in effect for that purpose.

5 (d) For purposes of Subsection (c) of this section, a
6 violation occurs before the effective date of this Act if any
7 element of the violation occurs before that date.

8 SECTION 5. The importance of this legislation and the
9 crowded condition of the calendars in both houses create an
10 emergency and an imperative public necessity that the
11 constitutional rule requiring bills to be read on three several
12 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable James E. "Pete" Laney
Speaker of the House of Representatives

4-28-99
(date)

Sir:

We, your COMMITTEE ON PUBLIC HEALTH

to whom was referred SB 846 have had the same under consideration and beg to report back with the recommendation that it

(☒) do pass, without amendment.

() do pass, with amendment(s).

() do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

(☒) yes () no A fiscal note was requested.

() yes (☒) no A criminal justice policy impact statement was requested.

() yes (☒) no An equalized educational funding impact statement was requested.

() yes (☒) no An actuarial analysis was requested.

() yes (☒) no A water development policy impact statement was requested.

() yes (☒) no A tax equity note was requested.

(☒) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor Gutierrez

Joint Sponsors: / / /

Co-Sponsors:

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Gray, Chair	<input checked="" type="checkbox"/>			
Coleman, Vice-chair				<input checked="" type="checkbox"/>
Capelo	<input checked="" type="checkbox"/>			
Delisi	<input checked="" type="checkbox"/>			
Glaze	<input checked="" type="checkbox"/>			
Hilderbran				<input checked="" type="checkbox"/>
McClendon	<input checked="" type="checkbox"/>			
Maxey	<input checked="" type="checkbox"/>			
Uresti				<input checked="" type="checkbox"/>

Total

6 aye

0 nay

0 present, not voting

3 absent

Patricia Gray
CHAIR

BILL ANALYSIS

Office of House Bill Analysis

S.B. 846
By: Carona
Public Health
4/21/1999
Engrossed

BACKGROUND AND PURPOSE

Current law requires a person who is taking the barber examination to pay a \$10 fee for such an examination. It is estimated that these examinations cost the agency \$35 to administer. Furthermore, the Texas Barber Law does not provide the State Board of Barber Examiners (board) the ability to assess administrative fines and civil penalties for violations of the law. S.B. 846 authorizes the board to set the examination fee that is charged to an applicant and provides that any violator of the Texas Barber law be assessed an administrative penalty.

RULEMAKING AUTHORITY

It is the opinion of the Office of House Bill Analysis that this bill does not expressly delegate any additional rulemaking authority to a state officer, department, agency, or institution.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 23(b), Article 8407a, V.T.C.S. (Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929), to require fees paid to the State Board of Barber Examiners (board) by an applicant for an examination to determine the applicant's fitness to receive a certificate of registration to practice barbering or to practice as a barber technician to be set by the board in an amount not to exceed \$50, rather than \$10.

SECTION 2. Amends Section 24, Article 8407a, V.T.C.S. (Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929), as follows:

Sec. 24. New title: VIOLATIONS. Provides a list of violations of this Act for which an administrative penalty may be imposed under Section 24A of this Act. Deletes language setting forth a list of offenses which constitute a misdemeanor punishable upon conviction in a court of competent judgment by a fine of \$25 to \$200. Makes a nonsubstantive change.

SECTION 3. Amends Article 8407a, V.T.C.S. (Chapter 65, Acts of the 41st Legislature, 1st Called Session, 1929), by adding Sections 24A through 24M, as follows:

Sec. 24A. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the board to impose an administrative penalty (penalty) on a person for a violation under Section 24 of this Act.

Sec. 24B. AMOUNT OF ADMINISTRATIVE PENALTY. Prohibits the penalty from exceeding \$1,000. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Requires the penalty amount to be based on certain factors.

Sec. 24C. REPORT AND NOTICE OF VIOLATION AND ADMINISTRATIVE PENALTY. Authorizes the executive director of the board, if determining that a violation occurred, to issue the board a report stating the facts upon which the determination is based and a recommendation on the imposition of a penalty, including a penalty amount. Requires the executive director to give written notice of the report to the person no later than the 14th day after the report is issued. Provides that the notice must include certain information with

respect to the violation.

Sec. 24D. ADMINISTRATIVE PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes a person, no later than the 20th day after receiving notice, to either accept the determination and recommended penalty or to make a request for a hearing on the occurrence of the violation, the penalty amount, or both. Requires the board, by order, to approve the determination and impose the penalty if the person accepts the determination and penalty.

Sec. 24E. HEARING. Requires the executive director to set a hearing and give written notice to a person, if the person requests a hearing or fails to respond to the notice in a timely manner. Authorizes an administrative law judge of the State Office of Administrative Hearings to hold the hearing. Authorizes the administrative law judge to make findings of fact and conclusions of law and promptly issue the board a proposal for a decision about the occurrence of the violation and any proposed penalty amount.

Sec. 24F. DECISION BY BOARD. Authorizes the board, by order and based on findings of fact and conclusions of law, to find that a violation occurred and impose a penalty or find that a violation did not occur. Provides that notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Sec. 24G. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires a person to pay the penalty or file a petition for judicial review contesting the occurrence of the violation, the penalty amount, or both, not later than the 30th day after the board's order becomes final.

Sec. 24H. STAY OF ENFORCEMENT OF ADMINISTRATIVE PENALTY. (a) Authorizes a person who files a petition for judicial review, within a 30-day period prescribed by Section 24G of this Act, to stay enforcement of the administrative penalty by paying the penalty to the court for placement in escrow or giving the court a supersedeas bond for the penalty amount and that is effective until all judicial review of the board's order is final. Optionally, authorizes the person to request that the court stay enforcement of the penalty by filing a sworn affidavit stating that the person is financially unable to pay the penalty or the supersedeas bond and giving a copy to the executive director by certified mail.

(b) Authorizes the executive director, if the executive director receives a copy of an affidavit under Subsection (a), to file with the court, no later than the fifth day after the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay enforcement of the penalty on finding that the alleged facts are true. Provides that the person filing the affidavit has the burden of proving that financial inability to pay the penalty and give a supersedeas bond.

Sec. 24I. COLLECTION OF ADMINISTRATIVE PENALTY. Authorizes the penalty to be collected if the person does not pay it and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

Sec. 24J. DECISION BY COURT. Authorizes the court to uphold or reduce the penalty amount and to order the person to pay the full or reduced penalty, if it sustains the finding that a violation occurred. Requires the court to order the a penalty is not owed, if it does not sustain the finding that a violation occurred.

Sec. 24K. REMITTANCE OF ADMINISTRATIVE PENALTY AND INTEREST. Requires the court to order, upon final judgment, that the appropriate penalty amount plus interest be remitted to the person, if the person paid the penalty and the penalty amount is reduced or the penalty is not upheld by the court. Provides that interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires interest to be paid between the date the penalty is paid and the date it is remitted.

Sec. 24L. RELEASE OF BOND. Requires the court to order, upon final judgment, the

release of a bond, if the person gave a supersedeas bond and the penalty is not upheld. Requires the court to order the release of the bond after the person pays a reduced amount of the penalty, if the person paid a supersedeas bond and the penalty amount is reduced.

Sec. 24M. ADMINISTRATION PROCEDURE. Provides that a proceeding to impose an administrative penalty is considered to be a contested one under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 4. Effective date: September 1, 1999.

Makes application of this Act prospective.

SECTION 5. Emergency clause.

SUMMARY OF COMMITTEE ACTION

SB 846

April 28, 1999 1:30PM
Considered in public hearing
Testimony taken in committee
Recommended to be sent to Local & Consent
Reported favorably without amendment(s)

WITNESS LIST

SB 846
HOUSE COMMITTEE REPORT
Public Health Committee

April 28, 1999 - 1:30PM

Registering, but not testifying:

On: Brown, Will R. (SRBE)

5

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

April 26, 1999

TO: Honorable Patricia Gray, Chair, House Committee on Public Health

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB846 by Carona (Relating to certain fees and penalties applicable to the regulation of barbers.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for SB846, As Engrossed: positive impact of \$59,673 through the biennium ending August 31, 2001.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2000	\$21,041
2001	38,632
2002	38,632
2003	38,632
2004	38,632

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 0001	Probable Savings/(Cost) from <i>General Revenue Fund</i> 0001
2000	\$ 39,041	\$ (18,000)
2001	56,632	(18,000)
2002	56,632	(18,000)
2003	56,632	(18,000)
2004	56,632	(18,000)

Fiscal Analysis

The bill would allow the Board of Barber Examiners to raise the examination fee up to

6

\$50 and to assess administrative fines up to \$1,000 for violations effective September 1, 1999. An increase in the examination fee would generate almost \$48,000 in revenue during the biennium. The Board would also generate about \$48,000 in revenue during the biennium from administrative fines assessed, and there would be costs of \$36,000 for fine cases referred to the State Office of Administrative Hearings.

Methodology

The Board of Barber Examiners estimates that the examination fee would be raised to \$35, which is the actual cost of administering the examination, and it would administer approximately 924 examinations in 2000 and 990 in 2001. Presently, the Board charges \$10 for the examination.

For the assessment of administrative fines, the Board estimates that there will be 200 violations per year. The Board believes it would collect the fines from 100 of those violations and refer the remaining 100 violations to the State Office of Administrative Hearings (SOAH). Based upon the Cosmetology Commission's experience assessing administrative fines up to \$1,000 in 1998-99, it is assumed that the Board would have a similar experience assessing administrative fines. At the Cosmetology Commission the average amount of the fines assessed is \$159.41 for a one year period.

For the 100 cases referred to SOAH each year, the estimated cost to the Board would be \$18,000. SOAH reports that it spends an average of two hours per administrative fine case for the Cosmetology Commission, which is similar to the Board, and has costs of \$90 per hour.

Local Government Impact

No significant fiscal implication to units of local government is anticipated. However, the impact on an individual local court will depend upon the number of violations referred in its jurisdiction and the amount of fines collected.

Source Agencies: 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 502 Board of Barber Examiners, 302 Office Of The Attorney General

LBB Staff: JK, TP, SD, RT, HL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 29, 1999

TO: Honorable Florence Shapiro, Chair, Senate Committee on State Affairs

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB846 by Carona (Relating to certain fees and penalties applicable to the regulation of barbers.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB846, As Introduced: positive impact of \$59,673 through the biennium ending August 31, 2001.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

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Fiscal Analysis

The bill would allow the Board of Barber Examiners to raise the examination fee up to \$50 and to assess administrative fines up to \$1,000 for violations effective September 1, 1999. An increase in the examination fee would generate almost \$48,000 in revenue during the biennium. The Board would also generate about \$48,000 in revenue during the biennium from administrative fines assessed, and there would be costs of \$36,000 for fine cases referred to the State Office of Administrative Hearings.

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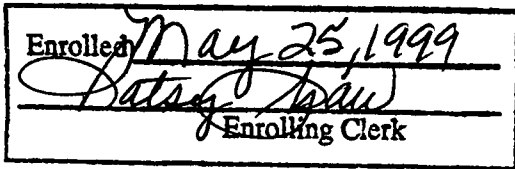
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Local Government Impact

No significant fiscal implication to units of local government is anticipated. However, the impact on an individual local court will depend upon the number of violations referred in its jurisdiction and the amount of fines collected.

Source Agencies: 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 502 Board of Barber Examiners, 302 Office Of The Attorney General

LBB Staff: JK, SD, RT, HL



S.B. No. 846

AN ACT

1 relating to certain fees and penalties applicable to the regulation
2 of barbers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Subsection (b), Section 23, Chapter 65, Acts of
5 the 41st Legislature, 1st Called Session, 1929 (Article 8407a,
6 Vernon's Texas Civil Statutes), is amended to read as follows:

7 (b) The fees to be paid to the Board by an applicant for an
8 examination to determine the applicant's [his] fitness to receive a
9 certificate of registration to practice barbering or to practice as
10 a barber technician shall be set by the Board in an amount not to
11 exceed \$50 [\$10].

12 SECTION 2. Section 24, Chapter 65, Acts of the 41st
13 Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's
14 Texas Civil Statutes), is amended to read as follows:

15 Sec. 24. VIOLATIONS [~~OFFENSES-AND--PENALTY~~]. Each of the
16 following is a violation of this Act for which an administrative
17 penalty may be imposed under Section 24A of this Act: [~~offenses~~
18 ~~shall--constitute--a--misdemeanor--punishable--upon--conviction--in--a~~
19 ~~court--of--competent--jurisdiction--by--a--fine--of--not--less--than~~
20 ~~twenty-five--dollars--(\$25.00)--nor--more--than--two-hundred-dollars~~
21 ~~(\$200.00):~~]

22 (A) The violation of any of the provisions of Sections
23 1, 2, or 3 of this Act;

24 (B) Permitting any person in one's employ,

1 supervision, or control to practice as a barber or other licensee
2 unless that person has a current certificate of registration or
3 license issued by the board;

4 (C) Obtaining or attempting to obtain a certificate of
5 registration or license by fraudulent representation;

6 (C-1) For anyone who owns, operates or manages a
7 barber school or college to work a chair or to permit teachers,
8 student teachers, or anyone other than an enrolled student to
9 render barbering services to the public in their said
10 establishment; and

11 (D) The willful failure to display a certificate of
12 registration or license as required by Section 19 of this Act.

13 SECTION 3. Chapter 65, Acts of the 41st Legislature, 1st
14 Called Session, 1929 (Article 8407a, Vernon's Texas Civil
15 Statutes), is amended by adding Sections 24A through 24M to read as
16 follows:

17 Sec. 24A. IMPOSITION OF ADMINISTRATIVE PENALTY. The board
18 may impose an administrative penalty on a person for a violation
19 under Section 24 of this Act.

20 Sec. 24B. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount
21 of the administrative penalty may not exceed \$1,000. Each day a
22 violation continues or occurs is a separate violation for purposes
23 of imposing a penalty.

24 (b) The amount of a penalty shall be based on:

25 (1) the seriousness of the violation, including the
26 nature, circumstances, extent, and gravity of the violation;

1 (2) the economic harm to property or the public caused
2 by the violation;

3 (3) the history of previous violations;

4 (4) the amount necessary to deter a future violation;

5 (5) efforts to correct the violation; and

6 (6) any other matter that justice may require.

7 Sec. 24C. REPORT AND NOTICE OF VIOLATION AND ADMINISTRATIVE
8 PENALTY. (a) If the executive director determines that a
9 violation occurred, the executive director may issue to the board a
10 report stating:

11 (1) the facts on which the determination is based; and

12 (2) the executive director's recommendation on the
13 imposition of an administrative penalty, including a recommendation
14 on the amount of the penalty.

15 (b) Not later than the 14th day after the date the report is
16 issued, the executive director shall give written notice of the
17 report to the person.

18 (c) The notice must:

19 (1) include a brief summary of the alleged violation;

20 (2) state the amount of the recommended penalty; and

21 (3) inform the person of the person's right to a
22 hearing on the occurrence of the violation, the amount of the
23 penalty, or both.

24 Sec. 24D. ADMINISTRATIVE PENALTY TO BE PAID OR HEARING
25 REQUESTED. (a) Not later than the 20th day after the date the
26 person receives the notice, the person in writing may:

1 (1) accept the determination and recommended
2 administrative penalty of the executive director; or

3 (2) make a request for a hearing on the occurrence of
4 the violation, the amount of the penalty, or both.

5 (b) If the person accepts the determination and recommended
6 penalty of the executive director, the board by order shall approve
7 the determination and impose the recommended penalty.

8 Sec. 24E. HEARING. (a) If the person requests a hearing or
9 fails to respond in a timely manner to the notice, the executive
10 director shall set a hearing and give written notice of the hearing
11 to the person. An administrative law judge of the State Office of
12 Administrative Hearings shall hold the hearing.

13 (b) The administrative law judge shall make findings of fact
14 and conclusions of law and promptly issue to the board a proposal
15 for a decision about the occurrence of the violation and the amount
16 of any proposed administrative penalty.

17 Sec. 24F. DECISION BY BOARD. (a) Based on the findings of
18 fact, conclusions of law, and proposal for a decision, the board by
19 order may:

20 (1) find that a violation occurred and impose an
21 administrative penalty; or

22 (2) find that a violation did not occur.

23 (b) The notice of the board's order given to the person must
24 include a statement of the right of the person to judicial review
25 of the order.

26 Sec. 24G. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not

1 later than the 30th day after the date the board's order becomes
2 final, the person shall:

3 (1) pay the administrative penalty; or

4 (2) file a petition for judicial review contesting the
5 occurrence of the violation, the amount of the penalty, or both.

6 Sec. 24H. STAY OF ENFORCEMENT OF ADMINISTRATIVE PENALTY.

7 (a) Within the 30-day period prescribed by Section 24G of this
8 Act, a person who files a petition for judicial review may:

9 (1) stay enforcement of the administrative penalty by:

10 (A) paying the penalty to the court for
11 placement in an escrow account; or

12 (B) giving the court a supersedeas bond approved
13 by the court that:

14 (i) is for the amount of the penalty; and

15 (ii) is effective until all judicial
16 review of the board's order is final; or

17 (2) request the court to stay enforcement of the
18 penalty by:

19 (A) filing with the court a sworn affidavit of
20 the person stating that the person is financially unable to pay the
21 penalty and is financially unable to give the supersedeas bond; and

22 (B) giving a copy of the affidavit to the
23 executive director by certified mail.

24 (b) If the executive director receives a copy of an
25 affidavit under Subsection (a)(2) of this section, the executive
26 director may file with the court, not later than the fifth day

1 after the date the copy is received, a contest to the affidavit.
2 The court shall hold a hearing on the facts alleged in the
3 affidavit as soon as practicable and shall stay the enforcement of
4 the penalty on finding that the alleged facts are true. The person
5 who files an affidavit has the burden of proving that the person is
6 financially unable to pay the penalty and to give a supersedeas
7 bond.

8 Sec. 24I. COLLECTION OF ADMINISTRATIVE PENALTY. (a) If the
9 person does not pay the administrative penalty and the enforcement
10 of the penalty is not stayed, the penalty may be collected.

11 (b) The attorney general may sue to collect the penalty.

12 Sec. 24J. DECISION BY COURT. (a) If the court sustains the
13 finding that a violation occurred, the court may uphold or reduce
14 the amount of the administrative penalty and order the person to
15 pay the full or reduced amount of the penalty.

16 (b) If the court does not sustain the finding that a
17 violation occurred, the court shall order that a penalty is not
18 owed.

19 Sec. 24K. REMITTANCE OF ADMINISTRATIVE PENALTY AND INTEREST.
20 (a) If the person paid the administrative penalty and if the
21 amount of the penalty is reduced or the penalty is not upheld by
22 the court, the court shall order, when the court's judgment becomes
23 final, that the appropriate amount plus accrued interest be
24 remitted to the person.

25 (b) The interest accrues at the rate charged on loans to
26 depository institutions by the New York Federal Reserve Bank.

1 (c) The interest shall be paid for the period beginning on
2 the date the penalty is paid and ending on the date the penalty is
3 remitted.

4 Sec. 24L. RELEASE OF BOND. (a) If the person gave a
5 supersedeas bond and the administrative penalty is not upheld by
6 the court, the court shall order, when the court's judgment becomes
7 final, the release of the bond.

8 (b) If the person gave a supersedeas bond and the amount of
9 the penalty is reduced, the court shall order the release of the
10 bond after the person pays the reduced amount.

11 Sec. 24M. ADMINISTRATIVE PROCEDURE. A proceeding to impose
12 an administrative penalty is considered to be a contested case
13 under Chapter 2001, Government Code.

14 SECTION 4. (a) This Act takes effect September 1, 1999.

15 (b) The change in law made by this Act to Subsection (b),
16 Section 23, Chapter 65, Acts of the 41st Legislature, 1st Called
17 Session, 1929 (Article 8407a, Vernon's Texas Civil Statutes),
18 applies only to an application for an examination filed on or after
19 that date. An application filed before the effective date of this
20 Act is governed by the law in effect on the date the application
21 was filed, and the former law is continued in effect for that
22 purpose.

23 (c) The change in law made by this Act applies only to a
24 violation under Section 24, Chapter 65, Acts of the 41st
25 Legislature, 1st Called Session, 1929 (Article 8407a, Vernon's
26 Texas Civil Statutes), as amended by this Act, that occurs on or

1 after the effective date of this Act. A violation of that section
2 that occurs before the effective date of this Act is governed by
3 the law in effect on the day the violation occurred, and the
4 former law is continued in effect for that purpose.

5 (d) For purposes of Subsection (c) of this section, a
6 violation occurs before the effective date of this Act if any
7 element of the violation occurs before that date.

8 SECTION 5. The importance of this legislation and the
9 crowded condition of the calendars in both houses create an
10 emergency and an imperative public necessity that the
11 constitutional rule requiring bills to be read on three several
12 days in each house be suspended, and this rule is hereby suspended.

S.B. No. 846

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 846 passed the Senate on April 8, 1999, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 846 passed the House on May 22, 1999, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

April 26, 1999

TO: Honorable Patricia Gray, Chair, House Committee on Public Health

FROM: John Keel, Director, Legislative Budget Board

IN RE: SB846 by Carona (Relating to certain fees and penalties applicable to the regulation of barbers.), As Engrossed

Estimated Two-year Net Impact to General Revenue Related Funds for SB846, As Engrossed: positive impact of \$59,673 through the biennium ending August 31, 2001.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2000	\$21,041
2001	38,632
2002	38,632
2003	38,632
2004	38,632

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 0001	Probable Savings/(Cost) from <i>General Revenue Fund</i> 0001
2000	\$ 39,041	\$ (18,000)
2001	56,632	(18,000)
2002	56,632	(18,000)
2003	56,632	(18,000)
2004	56,632	(18,000)

Fiscal Analysis

The bill would allow the Board of Barber Examiners to raise the examination fee up to

\$50 and to assess administrative fines up to \$1,000 for violations effective September 1, 1999. An increase in the examination fee would generate almost \$48,000 in revenue during the biennium. The Board would also generate about \$48,000 in revenue during the biennium from administrative fines assessed, and there would be costs of \$36,000 for fine cases referred to the State Office of Administrative Hearings.

Methodology

The Board of Barber Examiners estimates that the examination fee would be raised to \$35, which is the actual cost of administering the examination, and it would administer approximately 924 examinations in 2000 and 990 in 2001. Presently, the Board charges \$10 for the examination.

For the assessment of administrative fines, the Board estimates that there will be 200 violations per year. The Board believes it would collect the fines from 100 of those violations and refer the remaining 100 violations to the State Office of Administrative Hearings (SOAH). Based upon the Cosmetology Commission's experience assessing administrative fines up to \$1,000 in 1998-99, it is assumed that the Board would have a similar experience assessing administrative fines. At the Cosmetology Commission the average amount of the fines assessed is \$159.41 for a one year period.

For the 100 cases referred to SOAH each year, the estimated cost to the Board would be \$18,000. SOAH reports that it spends an average of two hours per administrative fine case for the Cosmetology Commission, which is similar to the Board, and has costs of \$90 per hour.

Local Government Impact

No significant fiscal implication to units of local government is anticipated. However, the impact on an individual local court will depend upon the number of violations referred in its jurisdiction and the amount of fines collected.

Source Agencies: 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings, 502 Board of Barber Examiners, 302 Office Of The Attorney General

LBB Staff: JK, TP, SD, RT, HL

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 29, 1999

TO: Honorable Florence Shapiro, Chair, Senate Committee on State Affairs

FROM: John Keel, Director, Legislative Budget Board

IN RE: **SB846** by Carona (Relating to certain fees and penalties applicable to the regulation of barbers.), **As Introduced**

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LBB Staff: JK, SD, RT, HL

3/4cert

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 846 passed the Senate on
April 8, 1919, by the following vote: Yeas 30,
Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 846 passed the House on
May 22, 1919, by a non-record vote the following vote: Yeas _____,
Nays _____.

Chief Clerk of the House

Approved:

Date

Governor

A BILL TO BE ENTITLED

AN ACT:

Relating to certain fees and penalties applicable to the regulation of barbers.

3-3-99 Filed with the Secretary of the Senate
MAR 04 1999 Read and referred to Committee on STATE AFFAIRS
MAR 31 1999 Reported favorably _____
Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.
Ordered not printed
APR 08 1999 Laid before the Senate
Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent
_____ yeas, _____ nays
APR 08 1999 Read second time, _____, and ordered engrossed by: { unanimous consent
~~a viva voce vote~~
_____ yeas, _____ nays
APR 08 1999 Senate and Constitutional 3 Day Rule suspended by a vote of 29 yeas, 1 nays.
APR 08 1999 Read third time, _____, and passed by: { ~~A viva voce vote~~
30 yeas, 0 nays

Betty King
SECRETARY OF THE SENATE

OTHER ACTION:

April 8, 1999 Engrossed
April 8, 1999 Sent to House

Engrossing Clerk

Datsy Spaw

APR 12 1999 Received from the Senate
APR 12 1999 Read first time and referred to Committee on Public Health
APR 28 1999 Reported _____ favorably (~~as amended~~) (~~as substituted~~)
MAY 04 1999 Sent to Committee on (~~Calendars~~) (Local & Consent Calendars)
MAY 22 1999 Read second time (~~comm. subst.~~) (~~amended~~); passed to third reading (~~failed~~) by a (non-record vote) (~~record vote of~~ _____ yeas, _____ nays, _____ present, not voting)
Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of _____ yeas, _____ nays, _____ present, not voting.
MAY 22 1999 Read third time (~~amended~~); finally passed (~~failed to pass~~) by a (non-record vote) (~~record vote of~~ _____ yeas, _____ nays, _____ present, not voting)
MAY 24 1999 Returned to Senate.
MAY 24 1999 Returned from House without amendment.
Returned from House with _____ amendments.
Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

Sharon Carter

CHIEF CLERK OF THE HOUSE

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

99 MAY -4 AM 8:40

HOUSE OF REPRESENTATIVES